
STATUTORY INSTRUMENTS

1993 No. 174

The Insurance Companies (Amendment) Regulations 1993

amendments of the 1982 act

Grounds for exercising supervisory powers

- 2.—(1) In the following provisions of the 1982 Act, namely—
- (a) subsection (2)(aa) of section 11(1) (withdrawal of authorisation in respect of new business: grounds);
 - (b) subsection (2)(b)(ia) of section 37(2) (powers of intervention: grounds: failure to satisfy obligations);
 - (c) subsections (1)(bb) and (2)(bb) of section 54(3) (winding up on petition of Secretary of State under the Insolvency Act 1986 or corresponding Northern Ireland provisions); and
 - (d) section 83A(4) (Lloyd’s underwriters – insurance Directives),

for the words “general insurance Directives” substitute the words “general or long term insurance Directives”.

Transfers of long term business

- 3.—(1) Part II of the 1982 Act (regulation of insurance companies) is amended as follows.
- (2) After subsection (6) of section 49 (sanction of court for transfer of long term business) insert—
- “(6A) Without prejudice to the generality of subsection (6) above, where the head office of the transferee company is situated in a member State other than the United Kingdom the court shall not make an order sanctioning the scheme unless—
- (a) the supervisory authorities of that member State certify that the transferee company possesses the necessary margin of solvency after taking the proposed transfer into account; or
 - (b) every policy included in the proposed scheme evidences a contract of reinsurance.
- (6B) Notwithstanding the provisions of subsection (6) above, where the establishment of the transferee company to which the policies are to be transferred is situated in a member State other than the United Kingdom, the court may make an order sanctioning the scheme if it is satisfied that—
- (a) the transfer relates to commitments situated in the United Kingdom;
 - (b) the transferee company is entitled in accordance with section 81B below to provide insurance in the United Kingdom in respect of those commitments through that establishment; and

(1) Section 11(2)(aa) was inserted by S.I. 1990/1333, reg. 8(1).
(2) Section 37(2)(b)(ia) was inserted by S.I. 1990/1333, reg. 8(2).
(3) Section 54 was amended by the Companies Consolidation (Consequential Provisions) Act 1985 (c. 9), Schedule 2, by the Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986 (S.I. 1986/1035 (N.I.9)), Schedule 1, by the Insolvency Act 1986 (c. 45), Schedule 14 and by S.I. 1990/1333, reg. 8(3).
(4) Section 83A was inserted by S.I. 1992/2890, reg. 8.

- (c) the supervisory authorities of the member State in which the establishment is situated agree to the transfer.”
- (3) After section 49 (sanction of court for transfer of long term business) insert—

“Modifications of section 49 in certain cases.

- 49A.**—(1) This section applies where—
- (a) it is proposed to carry out a scheme under which the whole or part of any long term business (other than reinsurance) carried on in the United Kingdom by an insurance company to which this Part of this Act applies (“the transferor company”) is to be transferred to another insurance company (“the transferee company”);
 - (b) all of the policies comprised in the business proposed to be transferred were written in the course of the provision of services in a member State other than the United Kingdom; and
 - (c) the head office of the transferee company is situated in a member State.
- (2) In any case where this section applies, section 49 above shall have effect as if—
- (a) in paragraph (a) of subsection (3), for the words “in the London, Edinburgh and Belfast Gazettes and, except where the court has otherwise directed, in two national newspapers” there were substituted the words “in two national newspapers in the United Kingdom, and in such publications or in such manner in the member State of the commitment as the court has directed,”;
 - (b) in paragraph (d) of that subsection, for the words “at offices in the United Kingdom of the companies concerned” there were substituted the words “at offices in the United Kingdom of the transferor company and at such place in the member State of the commitment as the court has directed”: and
 - (c) for the provisions of subsections (6) to (6B) there were substituted the following provisions of this section.
- (3) Where the establishment of the transferee company to which the policies are to be transferred is situated in the United Kingdom, the court shall not make an order sanctioning the scheme unless it is satisfied that—
- (a) the transferee company fulfils the conditions in Articles 11, 12, 14 and 16 of the second long term insurance Directive in the member State of the commitment;
 - (b) the supervisory authorities of that member State agree to the transfer; and
 - (c) the transferee company is, or immediately after the making of the order will be, authorised under section 3 or 4 above to carry on long term business of the class or classes to be transferred under the scheme.
- (4) Where the establishment of the transferee company to which the policies are to be transferred is situated in a member State other than the United Kingdom, the court shall not make an order sanctioning the scheme unless—
- (a) it is satisfied that the supervisory authorities of the member State where the establishment of the transferee company to which the policies are to be transferred is situated agree to the transfer; and
 - (b) where the member State of the commitment is not the member State in which the establishment is situated, it is also satisfied that—
 - (i) the establishment fulfils the conditions in Articles 11, 12, 14 and 16 of the second long term insurance Directive in the member State of the commitment;
 - (ii) the law of that member State provides for the possibility of such a transfer; and

(iii) the supervisory authorities of that member State agree to the transfer.

(5) Where the head office of the transferee company is situated in a member State other than the United Kingdom, the court shall not make an order sanctioning the scheme unless the supervisory authorities of that member State certify that the transferee company possesses the necessary margin of solvency after taking the proposed transfer into account.

(6) Where the court makes an order sanctioning the scheme, it shall direct that—

- (a) notice of the making of any order, or the execution of any instrument, giving effect to the transfer shall be published in the member State of the commitment; and
- (b) the notice shall specify a period during which any policy holder affected may cancel the policy;

and such an instrument or order shall not bind such a policy holder if either such a notice is not so published or the policy holder cancels the policy during the period so specified.”

(4) In section 52A(5) (issue of certificates by Secretary of State)—

- (a) in subsection (1), for the words “general policies”, in both places where they occur, there shall be substituted the words “general or long term policies”; and
- (b) in subsection (2), after the definition of “general policy” there shall be inserted the following definition—

“long term policy” means a policy evidencing a contract the effecting of which constitutes the carrying on of long term business, other than reinsurance.

Provision of insurance from another Member State

4.—(1) Part IIIA of the 1982 Act(6) (provision of insurance from another member State) is amended as follows.

(2) For subsection (1) of section 81A (introductory provisions) substitute—

“(1) References in this Part to the provision of insurance in a member State are to either or both of the following—

- (a) the covering of a risk situated there through an establishment in another member State (referred to in this Part as the provision of general insurance); and
- (b) the covering of a commitment there through an establishment in another member State (referred to in this Part as the provision of long term insurance).”

(3) In subsection (3) of that section—

- (a) in paragraph (a), after the word “Directive” insert the words “or Article 6 of the first long term insurance Directive”; and
- (b) after paragraph (b) replace the full stop at the end of paragraph (b) with a semi-colon and insert

“and

- (c) references to the covering of a commitment are to the covering (otherwise than by way of reinsurance) of a commitment to which this Part applies.”

(4) For subsection (4) of that section substitute—

“(4) This Part applies to—

- (a) risks falling within Schedule 2 to this Act (general business), other than—
class 1, so far as it relates to accidents at work;

(5) Section 52A was inserted by S.I. 1990/1333, reg. 9(2).

(6) Part IIIA was inserted by S.I. 1990/1333, reg. 10 and amended by S.I. 1992/2890, reg. 7.

class 13, so far as it relates to nuclear civil liability and pharmaceutical product liability;

classes 9 and 13, so far as they relate to the compulsory insurance of building works; and

(b) commitments falling within Schedule 1 to this Act other than class VII.”

(5) In subsection (1) of section 81B (provision of insurance in the United Kingdom: documents to be furnished to the Secretary of State)–

(a) in paragraph (a), for the words “Articles 16 and 17 of the first general insurance Directive” substitute the words “the relevant provisions” and for the words “that Directive” substitute the words “the relevant Directive”;

(b) in paragraph (b), after sub-paragraph (ii) insert
“and

(iii) where the company intends to provide long term insurance in the United Kingdom, confirms that all the commitments which the company intends to cover fall within the classes of insurance business which the company has been authorised to undertake through that establishment,”; and

(c) in paragraph (c), after the word “risks” insert the words “or commitments”.

(6) After subsection (1A) of that section insert–

“(1B) In subsection (1) above “the relevant Directive” and “the relevant provisions” mean respectively–

(a) if the company intends to cover risks, the first general insurance Directive and Articles 16 and 17 of that Directive;

(b) if the company intends to cover commitments, the first long term insurance Directive and Articles 18, 19 and 20 of that Directive.”

(7) In subsection (2) of that section, after the word “risks”, in each place where it occurs, insert the words “or commitments”.

(8) In subsections (1) and (2)(a) of section 81C (information to be given to the policy holder), after the word “risk” insert the words “or commitment”.

(9) In subsection (1) of section 81F (withdrawal of authorisation), for the words “Article 22 of the first general insurance Directive” substitute–

“(a) Article 22 of the first general insurance Directive; or

(b) Article 26 of the first long term insurance Directive.”

(10) In subsections (2) and (4) of section 81G (provision of insurance in another member State: notification to Secretary of State), after the word “risks”, in each place where it occurs, insert the words “or commitments”.

(11) In subsection (1) of section 81H (issue of certificates by Secretary of State)–

(a) in paragraph (a), for the words “Articles 16 and 17 of the first general insurance Directive” substitute the words “the relevant provisions”; and

(b) in paragraph (b), for the words “that Directive” substitute the words “the relevant Directive”.

(12) After that subsection insert–

“(1A) In subsection (1) above “the relevant Directive” and “the relevant provisions” mean respectively–

- (a) if the company intends to cover risks, the first general insurance Directive and Articles 16 and 17 of that Directive;
- (b) if the company intends to cover commitments, the first long term insurance Directive and Articles 18, 19 and 20 of that Directive.”

Law applicable to certain contracts of insurance

- 5.—(1) Part V of the 1982 Act (supplementary provisions) is amended as follows.
- (2) In subsection (1) of section 94B(7) (law applicable to certain contracts of insurance), after the words “the provisions of” insert the words “Part I of”.
- (3) For subsection (2) of that section substitute—
- “(1A) The law applicable to a contract of insurance to which Article 1 of the first long term insurance Directive applies shall be determined in accordance with the provisions of Part II of Schedule 3A to this Act if—
- (a) where the policy holder is an individual, he is habitually resident in a member State; or
 - (b) where the policy holder is not an individual, the establishment of the policy holder to which the contract relates is situated in a member State.
- (2) Subsections (1) and (1A) above do not apply in relation to a contract of reinsurance.”
- (4) The provisions of Schedule 3A to the 1982 Act(8) (law applicable to certain contracts of insurance) shall become Part I of that Schedule under the heading “GENERAL BUSINESS”; and in that Part—
- (a) in paragraphs 3(2), 4(2) and 5(1), for the words “this Schedule” substitute the words “this Part of this Schedule”;
 - (b) in paragraph 5(1), for the words from “shall apply” to the end substitute the words “shall act in accordance with the provisions of the Contracts (Applicable Law) Act 1990;” and
 - (c) in paragraph 5(2), for the words “those rules” substitute the words “those provisions”.
- (5) After that Part of that Schedule insert—

“PART II

LONG TERM BUSINESS

General rules as to applicable law

6. The law applicable to the contract is the law of the member State of the commitment. However, where the law of that member State so allows, the parties may choose the law of another country.

7. Where the policy holder is an individual and has his habitual residence in a member State other than that of which he is a national, the parties may choose the law of the member State of which he is a national.

(7) Section 94B was inserted by S.I. 1990/1333, reg. 6(1) and renumbered by S.I. 1992/2890, reg. 9(2).

(8) Schedule 3A was inserted by S.I. 1990/1333, reg. 6(2).

Mandatory rules

8. Nothing in this Part of this Schedule restricts the application of the rules of a part of the United Kingdom in a situation where they are mandatory, irrespective of the law otherwise applicable to the contract.

Supplementary provisions

9.—(1) Where a member State includes several territorial units, each of which has its own rules of law concerning contractual obligations, each unit shall be considered as a country for the purposes of identifying the applicable law.

(2) The provisions of this Part of this Schedule apply to conflicts between the laws of the different parts of the United Kingdom.

10.—(1) Subject to the preceding provisions of this Part of this Schedule, a court in a part of the United Kingdom shall act in accordance with the provisions of the Contracts (Applicable Law) Act 1990.

(2) In particular, reference shall be made to those provisions to ascertain for the purposes of paragraph 6 what freedom of choice the parties have under the law of a part of the United Kingdom.”

Interpretation

6.—(1) Part V of the 1982 Act (supplementary provisions) shall be amended as follows.

(2) In subsection (1) of section 96(9) (general interpretation)—

(a) after the definition of “claims representative” insert—

““commitment” means a commitment represented by insurance business of any of the classes specified in Schedule 1 to this Act;”

(b) after the definition of “margin of solvency” insert—

““member State of the commitment”, in relation to a commitment entered into at any date, means—

(a) where the policy holder is an individual, the member State in which he had his habitual residence at that date; or

(b) where the policy holder is not an individual, the member State in which the establishment of the policy holder to which the commitment relates was situated at that date;”.

(3) In the side-note to section 96A(10) (interpretation of expressions derived from general insurance Directives), omit the word “general”.

(4) For subsection (1B) of that section substitute—

“(1B) In this Act—

(a) “the first long term insurance Directive” means Council Directive [79/267/EEC](#) of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance;

(9) Section 96 was amended by the Companies Consolidation (Consequential Provisions) Act 1985 (c. 9), Schedule 2, by the Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986 (S.I. 1986/1035 (N.I.9)), by the Insolvency Act 1986 (c. 45), Schedule 14 and by S.I. 1992/2890, reg. 9(3).

(10) Section 96A was inserted by S.I. 1990/1333, reg. 2(1), and amended by S.I. 1992/2890, reg. 9(4).

(b) “the second long term insurance Directive” means Council Directive [90/619/EEC](#) of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive [79/267/EEC](#);

and “the long term insurance Directives” means those Directives.”

(5) In subsection (2) of that section, after the word “general” insert the words “or long term”.